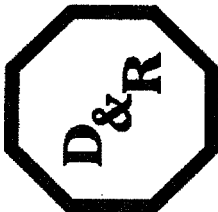


EXHIBIT X

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REPORTING & VIDEO, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HITUL GANDHI, individually)
and on behalf of a class of)
others similarly situated,)

Plaintiff,)

vs.)

No. A-08-CA-248-JRN

DELL INC., and DELL)
MARKETING USA, L.P.,)

Defendant.)

CATHERINE L. DAVIS and TOMMY)
MOORE, Individually and on)
Behalf of others similarly)
situated,)

vs.)

No. A-08-CA-794-JRN

DELL, INC. d/b/a DELL)
COMPUTER, INC., a Delaware)
corporation, DELL USA L.P.,)
a Texas Limited Partnership)
and DELL MARKETING L.P., a)
Texas Limited Partnership,)

Defendant.)

Atsumi, Amy Mai 12-17-2008

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	2	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	4
<p>DEPOSITION OF AMY MAI ATSUMI TAKEN ON BEHALF OF THE PLAINTIFFS IN OKLAHOMA CITY, OKLAHOMA ON DECEMBER 17, 2008</p> <p>Reported by: Elizabeth Caudill, CSR, RMR, CRR</p>		<p>CONTENTS</p> <p>Page Line</p> <p>Direct Examination by Ms. Waters 6 6</p> <p>Cross-Examination by Mr. Fox 169 20</p> <p>Redirect Examination by Ms. Waters . . . 171 6</p> <p>Jurat Page 176</p> <p>Witness Signature Page 177</p> <p>Reporter's Certificate 178</p> <p>PLAINTIFF'S INDEX OF EXHIBITS</p> <p>Page Line</p> <p>Exhibit 1 9 16</p> <p>Exhibit 2 10 6</p> <p>Exhibit 3 43 4</p> <p>Exhibit 4 51 6</p> <p>Exhibit 5 75 11</p> <p>Exhibit 6 83 14</p> <p>Exhibit 7 103 19</p> <p>Exhibit 8 124 15</p> <p>Exhibit 9 143 2</p> <p>*****</p>	
<p>APPEARANCES</p> <p>For the Plaintiff: Allison B. Waters Attorney at Law 10205 North Pennsylvania Oklahoma City, Oklahoma 73120</p> <p>Matt Dameron Attorney at Law 460 Nichols Road Suite 200 Kansas City, Missouri 64112</p> <p>For the Defendant: Michael W. Fox Attorney at Law 301 Congress Avenue Suite 1250 Austin, Texas 78701</p> <p>Christopher Hahn 2801 Via Fortuna Suite 100 Austin, Texas 78746</p>		<p>3</p> <p>5</p>	

Atsumi, Amy Mai 12-17-2008

<p>14</p> <p>1 Exhibit 2, I know you said you're not familiar 2 with this document, per se, but there's a couple 3 references here. One of them is to -- if you'll 4 look at the third page which is marked Davis 45. 5 A Yes, ma'am. 6 Q And at 58 it says "ISR, inside sales 7 representative." 8 A Yes. 9 Q Do you see that? 10 A Yes, I do. 11 Q Is ISR the term that would include 12 business sales representatives? 13 A Yes, ma'am. 14 Q Does it encompass more than just 15 business sales representatives? In other words, 16 would it include consumer sales representatives, 17 as well as business sales representatives? 18 A It would include that. 19 Q Do you see any other terminology that's 20 listed on this dictionary page that would include 21 a business sales representative other than number 22 58, ISR? 23 A Could you rephrase -- could you state 24 your question one more time just to make sure 25 I'm --</p>	<p>16</p> <p>1 accounts? 2 A Yes, ma'am. 3 Q Now, I take it the ISR terminology 4 would include not just sales reps that are 5 focused on selling to businesses but it would 6 include consumers; correct? 7 A Yes, according to our job titles. 8 Q But the RSR function would only be 9 business-focused sales? 10 A No. We have individuals with the job 11 title ISR that are relationship sales 12 representatives. 13 Q That focus on consumer sales? 14 A No. The individuals that support 15 relationship customers are included -- are part 16 of our business sales division. 17 Q Okay. I guess I'm confused. 18 A Sure. 19 Q I'm just trying to get to: Are the 20 RSR's focused only on selling to businesses, 21 ma'am? 22 A Yes. 23 Q Okay. But the terminology ISR can 24 incorporate more than business-focused sales 25 reps; correct?</p>
<p>15</p> <p>1 Q Do you see on the dictionary pages I've 2 presented to you as Exhibit 2 any other terms 3 that would incorporate the ISR job function other 4 than number 58? 5 A So in the document you provided, page 6 labeled Davis 0046, there is item number 77 -- 7 Q Okay. 8 A -- that says "relationship sales 9 representatives." Those are individuals whom we 10 consider sales representatives also included in 11 our business sales division. 12 Q How do those differ from ISR's? 13 A Relationship sales representatives? 14 Q Yes. 15 A Their job responsibilities differ in 16 some regard with regards to how they manage their 17 customer relationships. 18 Q And what is the difference, generally, 19 if you could tell us? 20 A Relationship sales representatives are 21 assigned accounts to which they maintain and 22 manage, and often outbound contact to those 23 customers directly rather than waiting for those 24 customers to call in through a queue. 25 Q And these accounts, are these business</p>	<p>17</p> <p>1 A Correct. 2 Q All right. Now, are you saying that 3 the RSR's, would those individuals fall under the 4 category ISR? 5 A Yes, that is what I'm saying. 6 Q Okay. Now, in terms of compensation, I 7 understand there's been a change. Consumer sales 8 reps are now hourly employees; is that correct? 9 A Correct. 10 Q However, the business sales 11 representatives -- by the way, what's the best 12 way to refer to business sales representatives? 13 Do you use any type of acronym? 14 A No. You can utilize business sales 15 representatives if my understanding is by your 16 use non-consumer sales representatives. 17 Q All right. Are those folks, are they 18 hourly or are they salaried individuals right 19 now? 20 A Currently they are salaried individuals 21 non-exempt. 22 Q So there's been no change to the 23 business sales representatives as there was with 24 the consumer sales representatives in terms of 25 compensation?</p>

Atsumi, Amy Mai 12-17-2008

<p style="text-align: right;">66</p> <p>1 representatives are compensated.</p> <p>2 Q Using the fluctuating work week?</p> <p>3 A Correct.</p> <p>4 Q All right. Are you familiar with why</p> <p>5 Dell chose to compensate its business sales</p> <p>6 representatives using the fluctuating work week,</p> <p>7 ma'am?</p> <p>8 A No, I don't know why specifically. I</p> <p>9 wasn't here -- employed at the time they made</p> <p>10 that decision.</p> <p>11 Q Do you know who was responsible for</p> <p>12 making that decision or what department was</p> <p>13 responsible?</p> <p>14 A No, I do not.</p> <p>15 Q And what's your understanding of the</p> <p>16 fluctuating work week, ma'am?</p> <p>17 A Could you be a little bit more specific</p> <p>18 on what you mean by my understanding?</p> <p>19 Q Well, do you know what the terminology</p> <p>20 "fluctuating work week" means?</p> <p>21 A So I believe that fluctuating work week</p> <p>22 is another term utilized to describe salaried</p> <p>23 non-exempt. It allows for compensation based</p> <p>24 upon hours that may fluctuate on any given work</p> <p>25 week.</p>	<p style="text-align: right;">68</p> <p>1 week"?</p> <p>2 Q Uh-huh.</p> <p>3 A I learned it while being employed at</p> <p>4 Dell.</p> <p>5 Q And what was the circumstance in which</p> <p>6 you heard that term and learned about it?</p> <p>7 A In association with the explanation of</p> <p>8 how salaried non-exempt worked at Dell.</p> <p>9 Q When did you receive this explanation</p> <p>10 of how salaried non-exempt worked?</p> <p>11 A I don't recall the specific date.</p> <p>12 Q Has it been recently?</p> <p>13 A I've known probably within the last two</p> <p>14 years.</p> <p>15 Q And was this in connection with a</p> <p>16 conversation with any of your supervisors, or how</p> <p>17 did this come up, if you recall?</p> <p>18 A Came up through talking to one of the</p> <p>19 individuals on our compensation team at Dell when</p> <p>20 I first took the role in Oklahoma City as the</p> <p>21 human resources leader.</p> <p>22 Q And by the way, when was that time</p> <p>23 frame that you took that role as human resources</p> <p>24 leader? And that's the position you hold now;</p> <p>25 correct?</p>
<p style="text-align: right;">67</p> <p>1 Q In other words, hours fluctuating below</p> <p>2 40 hours per week; is that correct?</p> <p>3 A Hours fluctuating above 40 hours a</p> <p>4 week. So anyone on our fluctuating work week or</p> <p>5 salaried non-exempt gets compensated, at minimum,</p> <p>6 for the full 40 hours.</p> <p>7 Q Is it your understanding that in order</p> <p>8 to use a fluctuating work week method of</p> <p>9 calculation of overtime that the individual has</p> <p>10 to work less than 40 hours a week?</p> <p>11 MR. FOX: I'll object to that to the</p> <p>12 extent it calls for a legal conclusion.</p> <p>13 Q (By Ms. Waters) Do you understand my</p> <p>14 question?</p> <p>15 A I didn't, actually.</p> <p>16 Q Okay. And you don't have any legal</p> <p>17 training; correct?</p> <p>18 A No.</p> <p>19 Q And you don't have any specific</p> <p>20 training through Dell on FLSA or overtime wage</p> <p>21 and hour issues, do you?</p> <p>22 A No.</p> <p>23 Q Tell me how you first learned about the</p> <p>24 term "fluctuating work week," ma'am.</p> <p>25 A So the specific term "fluctuating work</p>	<p style="text-align: right;">69</p> <p>1 A Correct. I hold the human resources</p> <p>2 leader, but my current responsibilities include</p> <p>3 more than just Oklahoma City.</p> <p>4 Q And that's fair enough. All right. So</p> <p>5 when were you promoted to take that role as a</p> <p>6 leader?</p> <p>7 A Beyond Oklahoma City or just for</p> <p>8 Oklahoma City?</p> <p>9 Q Well, let's take Oklahoma City first.</p> <p>10 A Okay. Oklahoma City in February of two</p> <p>11 thousand and -- I'm sorry. I have to count back.</p> <p>12 Just one moment -- 2007.</p> <p>13 Q Okay. And then you were promoted to</p> <p>14 have more responsibility beyond Oklahoma City</p> <p>15 later?</p> <p>16 A Correct.</p> <p>17 Q When was that date?</p> <p>18 A I don't know the exact date. I believe</p> <p>19 it was March 2008.</p> <p>20 Q All right. Did you have the</p> <p>21 conversation about this fluctuating work week in</p> <p>22 March 2008?</p> <p>23 A No. It was closer to the February 2007</p> <p>24 time frame.</p> <p>25 Q All right. And who were you talking</p>

Atsumi, Amy Mai 12-17-2008

<p style="text-align: right;">70</p> <p>1 with when you were discussing this issue?</p> <p>2 A Michael Hudanick.</p> <p>3 Q And what was the circumstance for the</p> <p>4 conversation with Mr. Hudanick about the</p> <p>5 fluctuating work week?</p> <p>6 A Since it was one of the first times I</p> <p>7 had responsibility for a site that included a</p> <p>8 sales division, I spent time with Mr. Hudanick on</p> <p>9 the phone to have him educate me a bit on how</p> <p>10 sales compensation plans work and just general</p> <p>11 information about what I might need to understand</p> <p>12 about sales.</p> <p>13 Q Did Mr. Hudanick provide you with any</p> <p>14 documents at that point in time?</p> <p>15 A No. He referred me to a sales</p> <p>16 compensation website that we have that holds</p> <p>17 information with regards to sales compensation</p> <p>18 plans.</p> <p>19 Q And that's a Dell website?</p> <p>20 A Yes, ma'am.</p> <p>21 Q Do you know what the title of that</p> <p>22 website is or what the address for the website</p> <p>23 is?</p> <p>24 A I don't know the title or the address</p> <p>25 specifically, no.</p>	<p style="text-align: right;">72</p> <p>1 fluctuating work week; correct?</p> <p>2 A Yes.</p> <p>3 Q Okay. So you've got some people that</p> <p>4 are salaried non-exempt that are not business</p> <p>5 sales representatives that are paid time and a</p> <p>6 half as opposed to the half rate under the</p> <p>7 fluctuating work week; correct?</p> <p>8 A Well, even our business sales</p> <p>9 representatives even under fluctuating work week</p> <p>10 receive time and a half pay --</p> <p>11 Q Okay.</p> <p>12 A -- for their overtime hours.</p> <p>13 Q Okay.</p> <p>14 A We also have regular hourly employees</p> <p>15 in Oklahoma City that receive time and a half pay</p> <p>16 as well.</p> <p>17 Q But that overtime rate calculation for</p> <p>18 those hourly people, the overtime hour is</p> <p>19 actually multiplied by their hourly rate plus 50</p> <p>20 percent; correct?</p> <p>21 A For which population, just to make sure</p> <p>22 we're talking about the same population?</p> <p>23 Q The hourly, for example. The hourly</p> <p>24 people.</p> <p>25 A The regular hourly people, not salaried</p>
<p style="text-align: right;">71</p> <p>1 Q Is that the website where the</p> <p>2 information you reviewed about the two methods of</p> <p>3 compensation for overtime resides?</p> <p>4 A I believe that that website includes</p> <p>5 that type of information, but I have not reviewed</p> <p>6 every document within that website.</p> <p>7 Q All right. Now, in Oklahoma City,</p> <p>8 aside from the business sales representatives,</p> <p>9 are there any individuals, to your understanding,</p> <p>10 that are receiving overtime on a time and a half</p> <p>11 calculation as opposed to the fluctuating work</p> <p>12 week half rate calculation?</p> <p>13 A Just to make sure I understood your</p> <p>14 question clearly, you're asking me if there are</p> <p>15 any other employees in Oklahoma City?</p> <p>16 Q Yes.</p> <p>17 A Yes. That receive time and a half</p> <p>18 calculation of pay, yes.</p> <p>19 Q Can you give us a listing of the</p> <p>20 categories of those folks that would be time and</p> <p>21 a half?</p> <p>22 A So they would include our salaried</p> <p>23 non-exempt individuals.</p> <p>24 Q Okay. But the business sales reps,</p> <p>25 we're not talking about those because they're</p>	<p style="text-align: right;">73</p> <p>1 non-exempt, but regular hourly individuals --</p> <p>2 Q Right.</p> <p>3 A -- individuals in Oklahoma City.</p> <p>4 State the question one more time.</p> <p>5 Q Well, those hourly folks, their</p> <p>6 overtime is calculated at 1.5 times their hourly</p> <p>7 rate.</p> <p>8 A Correct.</p> <p>9 Q Correct?</p> <p>10 A Yes.</p> <p>11 Q Now, the business sales</p> <p>12 representatives, just to clarify, their overtime</p> <p>13 rate is multiplied by .5 as opposed to 1.5 to</p> <p>14 reach their overtime; correct?</p> <p>15 A So for their overtime pay, they do</p> <p>16 receive, in total, 1.5 times their hourly rate.</p> <p>17 Q But that's not my question. To</p> <p>18 calculate the overtime, ma'am, you don't multiply</p> <p>19 by 1.5 for the business sales representatives, do</p> <p>20 you?</p> <p>21 A So for portions of the overtime</p> <p>22 payment, you multiply by the .5, but we're -- but</p> <p>23 the 1 of the 1.5 is included in their base salary</p> <p>24 that covers their hours worked, all hours worked.</p> <p>25 Q Okay. But that's not my question. I'm</p>